

1 Michael R. Crosner (SBN 41299)
2 mike@crosonerlegal.com
3 Zachary M. Crosner (SBN 272295)
4 zach@crosonerlegal.com
5 J. Kirk Donnelly (SBN 179401)
6 **CROSNER LEGAL, PC**
7 433 N. Camden Dr., Ste. 400
Beverly Hills, CA 90210
Tel: (310) 496-5818
Fax: (310) 510-6429

8 Attorneys for Plaintiff Laura Buford

9

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 LAURA BUFORD, on behalf of herself
13 and others similarly situated,

14 Plaintiff,

15 vs.

16 MEDICAL SOLUTIONS, L.L.C., a
17 Nebraska limited liability corporation;
and DOES 1 through 100, inclusive.

18 Defendants.

19 CASE NO.: 4:18-CV-04864-YGR

20 **PLAINTIFF'S MEMORANDUM OF**
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT

21 Date: July 21, 2020

22 Time: 2:00 p.m.

23 Place: Courtroom 1, 4th Floor

24 Hon. Yvonne Gonzalez-Rogers

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF THE FACTS	2
III.	SETTLEMENT TERMS	3
	A. Proposed Settlement Terms	3
	B. Class Certification	3
	C. Settlement Funds and Distribution	3
	D. Settlement Administration	4
	E. Attorney's Fees And Litigation Expenses	5
	F. Incentive Award For The Class Representative	6
	G. Releases	6
	H. PAGA Penalties	7
IV.	THE SETTLEMENT MEETS THE REQUIREMENTS FOR FINAL APPROVAL	7
	A. The Strength of Plaintiff's Case	9
	B. The Risk, Expense, Complexity and Likely Duration of Further Litigation.....	10
	C. The Risk of Maintaining Class Action Status Throughout the Trial	10
	D. The Amount Offered in Settlement	11
	E. The Stage of the Proceedings and the Extent of Discovery Completed....	12
	F. The Experience and Views of Counsel.....	12
	G. The Reaction of the Class to the Settlement.....	13
	H. No Collusion Between the Parties or their Counsel	13
V.	PAGA PENALTIES AND NOTICE TO THE LWDA.....	13
VI.	THE CLAIM ADMINISTRATOR'S FEES	14
VII.	THE PROPOSED CLASS REPRESENTATIVE PAYMENT IS REASONABLE	15
VIII.	CONCLUSION	16

TABLE OF AUTHORITIES**CASES**

<u>Class Plaintiffs v. Seattle,</u> 995 F.2d 1268 (9 th Cir. 1992)	8-9
<u>Hanlon v. Chrysler Corp.</u> 150 F. 3d 1011(9 th Cir. 1998).....	8
<u>In re: American Bank v. Note Holographics</u> 127 F. Supp. 2d. 418 (S.D. N.Y. 2001)	13
<u>In re: GMC Pick-Up Truck Fuel Tank Prods Litig.</u> 55 F. 3d 768 (3d. Cir. 1995).....	10
<u>Jordan</u> 2018 U.S. Dist. LEXIS 25297.....	11,13
<u>Kakani v. Oracle Corp.</u> 2007 WL 1793774 (N.D. Cal June 19, 2007)	11
<u>Linney v. Cellular Alaska Partnership</u> 151 F.3d 1234 (9 th Cir. 1998).....	8-9
<u>Mandujano v. Basic Vegetable Prod. Inc.</u> 541 F.2d 832 (9 th Cir. 1976).....	13
<u>Nelson v. Avon 5 Prod. Inc.</u> 2017 WL 733145 (N.D. Cal. Feb. 24, 2017).....	15
<u>Officers for Justice v. Civil Service Comm'n</u> 688 F.2d 615 (9 th Cir. 1982).....	7-8
<u>Torchia v. W.W. Grainger, Inc.</u> (E.D. Cal. 2014) 304 F.R.D. 256.....	15
<u>Wal-Mart Stores, Inc. v. Visa U.S.A., Inc. .</u> 396 F 3d. 96 (2d. Cir. 2005).....	8
<u>White v. Experian Information Solutions, Inc.</u> 803 F. Supp. 2d 1086 (C.D. Cal. 2011).....	9

STATE CASES

<u>Arias v. Superior Court</u> 46 Cal. 4 th 969 (2009).....	6
---	---

1	<u>Duran v. U.S. Bank</u>	
1	59 Cal. 4th 1 (2012).....	10
2	<u>Wershba v. Apple Computer</u>	
3	(2001) Cal. App. 4th 224.....	9

4 **RULES & STATUTES**

5	Fed.R.Civ.P. 23(e) 4.....	7
---	---------------------------	---

6 **OTHER AUTHORITY**

7 c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket
7 Guide for Judges, at 20 (3d. ed 2010), available

8 <http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf>).....11

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff and Class Representative Laura Buford seeks final approval of a non-
 4 reversionary settlement resolving (a) on a class basis, certain wage and hour claims
 5 on behalf of approximately 795 individuals who worked for Defendant Medical
 6 Solutions, LLC (“Medical Solutions” or “Defendant”) as non-exempt health care
 7 providers staffed at facilities operated by Sutter Health in California from May 10,
 8 2014 to February 14, 2020 (the “Class Members”), and (b) certain claims for civil
 9 penalties under the California Private Attorneys General Act (“PAGA”) on behalf of
 10 the State of California and approximately 1,771 “aggrieved” individuals employed by
 11 Defendant in California from August 28, 2018 to February 14, 2020, and who were
 12 staffed at facilities operated by various entities other than Sutter Health (the
 13 “Settlement Aggrieved Group” or “SAG”). The proposed \$1,150,000 settlement
 14 provides approximately \$607,500 in cash payments to the Class Members, along with
 15 another \$50,000 in cash payments to the SAG, with the remaining balance of
 16 approximately \$492,500 covering a modest and well-earned service award to Plaintiff,
 17 settlement administration costs, civil penalties to the State of California (including
 18 \$150,000 allocated to civil penalties for the SAG’s PAGA claims), and an award of
 19 “benchmark” attorney’s fees and litigation costs. The parties and their counsel
 20 finalized the settlement after extensive and difficult arms-length negotiations
 21 overseen by an experienced and highly regarded mediator. The Court
 22 preliminarily approved the class component of the settlement on February 14, 2020,
 23 while simultaneously approving the PAGA-only component attributable to the SAG.

24 Since then, the Court-approved notice forms were mailed to the Class Members,
 25 who reacted very favorably to the settlement. Not one class member objected to the
 26 settlement, and only two class members requested exclusion. A separate notice was
 27 mailed to the SAG informing them of the settlement of the PAGA-only part of the
 28 settlement and their eligibility for a share of the proposed civil penalties. Accordingly,

1 on behalf of herself and the Class, Plaintiff respectfully requests the Court grant this
 2 motion, give its full and final approval to the settlement, and enter judgment
 3 accordingly.

4 **II. STATEMENT OF FACTS**

5 Plaintiff outlined the details of the procedural and factual background of this
 6 matter in her Motion for Preliminary Approval of Class and Representative Action
 7 Settlement (filed December 10, 2019; Docket No. 33). To briefly refamiliarize the
 8 Court with this matter, in May 2018 Plaintiff Buford filed a class action complaint in
 9 the Alameda Superior Court asserting various wage and hour claims against Defendant
 10 on behalf of individuals employed by Medical Solutions as non-exempt “travel nurses” in
 11 California from May 10, 2014 onward. Plaintiff then filed a First Amended Complaint
 12 adding a cause of action under PAGA, after which Defendant removed the case to this Court
 13 in August 2018. [Declaration of Zachary M. Crosner (“Crosner Decl.”), ¶¶ 2-3; Docket No.
 14 1.]

15 After in-depth formal and informal discovery, the parties participated in an
 16 adversarial mediation in August 2019. Following a full day of contentious negotiations and
 17 discussions regarding the claims and defenses in this action, as well as the risks involved in
 18 further litigation, the Parties ultimately reached agreement on all material terms. [Crosner
 19 Decl., ¶¶ 4-6.] The final terms of the proposed settlement are encompassed in the Joint
 20 Stipulation of Class Settlement and Release (“Joint Stipulation”) filed on or about
 21 December 10, 2019 (Docket No. 34).

22 On February 14, 2020, this Court issued its Order (the “February 14 Order”) (a)
 23 granting preliminary approval to the class component of the settlement and (b)
 24 approving the PAGA-only component attributable to the SAG. [Docket No. 40.]
 25 Notices were mailed to all Class, SAG and SAG-Class Members on March 30, 2020,
 26 with a 45-day window for Class Members to opt out or object to the class component
 27 of the proposed settlement. [Declaration of Alan Garrido (“Garrido Decl.”), ¶¶ 10,
 28 13.] As addressed at preliminary approval and in the February 14 Order, the California

1 Labor & Workforce Development Agency also was given notice of the settlement and
 2 preliminary approval hearing but did not submit any comment or objection to the
 3 proposed settlement of claims under PAGA. [February 14 Order, at ¶ 5 (Docket No.
 4 40).]

5 **III. SETTLEMENT TERMS**

6 **A. Proposed Settlement Terms.**

7 In total, Defendant will fund a settlement in the amount of \$1,150,000 (the “Gross
 8 Settlement Amount”). The Gross Settlement Amount is inclusive of all payments
 9 contemplated under the Settlement and accounts for: (1) all Individual Settlement Amounts
 10 to both the Class and the SAG; (2) Plaintiff’s Enhancement Payment not to exceed \$5,000;
 11 (3) civil penalties to the California Labor Workforce & Development Agency of \$157,500
 12 in satisfaction of PAGA, including \$7,500 for the Class claims and \$150,000 for the SAG
 13 claims; (4) settlement administration costs not to exceed \$25,000; (5) reimbursement of
 14 litigation costs not to exceed \$15,000; and (6) an award of “benchmark” attorney’s fees not
 15 to exceed \$287,500 (25% of the Gross Settlement Amount). No money will revert to
 16 Defendant. [Crosner Decl., ¶ 7.]

17 **B. Class Certification**

18 Through its February 14, 2020 Order, the Court granted conditional certification
 19 of a settlement class defined as “all persons employed by Defendant in California as non-
 20 exempt employees, including but not limited to traveling healthcare professionals, who
 21 worked an assignment at any facility operated by Sutter Health or a related company during
 22 the Settlement Class Period (May 10, 2014 to February 14, 2020).” The Claim
 23 Administrator ultimately mailed class notices to 795 individuals identified as members
 24 of the Class, with 107 of those individuals included in both the Class and SAG.
 25 [Garrido Decl., ¶ 8.] Nothing has changed to require reconsideration of the findings
 26 supporting the Court’s certification of the Settlement Class. [Crosner Decl., ¶ 8.]

27 **C. Settlement Funds and Distribution**

28 Approximately \$607,500 from the Gross Settlement Amount will be distributed to

1 the Class Members, while an additional \$50,000 in civil penalties will be distributed to the
 2 SAG (with Class-SAG Members eligible to receive a payment from both funds). This is a
 3 cash settlement that did not require Class Members to submit a claim form to receive their
 4 settlement share, and both the Class Members and SAG Members will receive their
 5 settlement checks automatically via First Class U.S. Mail. [Crosner Decl., ¶ 9.] Only two
 6 class members opted out of the settlement, representing a 99.75% participation rate.
 7 [Garrido Decl., ¶ 16.]

8 Each Class Member who did not opt-out will be entitled to a pro rata share of the
 9 Net Settlement Amount based upon his or her total weeks worked during the Class Period,
 10 while each SAG Member is entitled to a pro rata share of the SAG Fund based upon his or
 11 her total pay periods worked during the SAG Period.¹ As addressed on preliminary
 12 approval, the Parties believe a pro rata distribution based on the number of weeks/pay
 13 periods worked by each participating individual during the relevant time periods will fairly
 14 allocate the settlement proceeds in light of the legal theories asserted and the evidence
 15 adduced prior to mediation. These methods are intended to ensure each individual receives
 16 a portion of the available settlement funds corresponding to the relative value of his or her
 17 potential claims, and the proposed allocation provides the most reasonable way to
 18 compensate Class and SAG Members based on the amount of time they worked for Medical
 19 Solutions and the number of instances they may not have been compensated properly and
 20 the number of potential missed meal and rest periods. [Crosner Decl., ¶¶ 9-10.] Awards
 21 will average about \$745 for the Class Members, with the maximum award estimated at just
 22 over \$4,000. The average SAG award is about \$28, and the largest SAG award is about
 23 \$98. [Garrido Decl., ¶ 18.]

24 **D. Settlement Administration**

25 The Settlement Administrator, CPT, Inc., carried out the notice plan
 26 contemplated by the settlement and as ordered by the Court, including running each

27 ¹ The SAG is defined as “persons employed by Defendant in California as non-exempt employees,
 28 including but not limited to traveling healthcare professionals, who worked an assignment at any facility
 other than a facility operated by Sutter Health or a related company during the SAG Period.”

1 address through the National Change of Address database and "skip-tracing" any
 2 notices returned as undeliverable. [Garrido Decl., ¶¶ 3-12.] The Class Notice,
 3 previously approved by the Court, duly informed Class Members of the settlement
 4 terms, including the estimated relief each Class Member will receive, the amounts to
 5 be requested for attorney's fees and class representative enhancement award, and the
 6 right to opt out of or object to the settlement. [Garrido Decl., Exhs. A and C.] The
 7 Settlement Administrator mailed a total of 2,459 Notices on March 30, 2020,
 8 including 688 Class Notices, 107 Class-SAG Notices, and 1,664 SAG Notices.
 9 [Garrido Decl., ¶¶ 8-10; Exhs. A-C.] Only 30 Notices ultimately were deemed
 10 undeliverable, meaning 2,429 individuals eligible to participate in the Settlement
 11 (approximately 98.77%) received their respective Notices and, out of the 795 Class
 12 Members, only 7 Notices were deemed undeliverable, representing a 99.12%
 13 success rate. [Garrido Decl., ¶ 9.] The 45-day response window for opting out or
 14 objecting to the class component of the settlement expired on May 14, 2020.
 15 [Garrido Decl., ¶ 8.] As of the filing of this motion, no objections and only 2
 16 requests for exclusion were received by CPT. [Garrido Decl., ¶¶ 14, 16.] There are
 17 no outstanding disputes regarding the information used to calculate class member
 18 settlement shares. [Garrido Decl., ¶ 15.]

19 Consistent with the Court's February 14, 2020 Order and PAGA, the SAG
 20 Members were precluded from opting out of or objecting and the SAG Notice
 21 simply informed them of the pending settlement and their entitlement to a share of
 22 the proposed civil penalties. [Garrido Decl., Exh. B.]

23 **E. Attorney's Fees And Litigation Expenses**

24 Medical Solutions agreed not to oppose an application for an award of
 25 attorney's fees up to one-quarter of the gross settlement fund, or \$287,500, as well as
 26 litigation costs and expenses up to \$15,000.00. Plaintiff's counsel filed a separate
 27 motion for attorney's fees and costs, set to be heard concurrently with this motion,
 28 attesting to the nature and scope of the work performed as well the costs and

1 expenses incurred. [Crosner Decl., ¶ 11.] Importantly, not one class member
 2 objected to the proposed award of fees and costs. [Garrido Decl., ¶ 14.]

3 **F. Incentive Award For The Class Representative**

4 Plaintiff also seeks final approval of a class representative enhancement
 5 payment of \$7,500, in addition to her pro rata share of the settlement proceeds. The
 6 proposed service award reflects Plaintiff's efforts to protect the class interests, the
 7 successful results achieved, the time she expended in the litigation, and the financial
 8 and professional risks she undertook. As detailed in her declaration submitted with
 9 the preliminary approval motion (Docket No. 36), Plaintiff was actively involved in
 10 the case, including meeting and conferring with counsel, assisting in counsel's
 11 investigation, providing relevant documents and emails, reviewing documents, and
 12 taking on the risks associated with filing a lawsuit against an employer for the
 13 benefit of the Class and the State. [Crosner Decl., ¶ 12.] As with the requested
 14 attorney's fees and costs, there were no class member objections to the proposed
 15 enhancement award. [Garrido Decl., ¶ 14.]

16 **G. Releases**

17 Upon final approval, Class Members will release Medical Solutions, LLC and
 18 other Released Parties (as defined in the Joint Stipulation) from all claims set forth
 19 in the operative complaint, or that could have been pleaded based on the factual
 20 allegations underlying the operative complaint, including PAGA claims, from May
 21 10, 2014 to February 14, 2020.² The SAG will release only claims for violation of
 22 PAGA that were or could have been alleged based on the facts alleged in the FAC, from
 23 August 28, 2018 to February 14, 2020, consistent with Arias v. Superior Court, 46
 24 Cal.4th 969, 985-86 (2009) (judgment in a PAGA case is “binding not only on the
 25 named employee plaintiff but also on government agencies and any aggrieved employee

27 ² Lastly, certain claims are expressly excluded from both the Class Release and the SAG Release. These
 28 claims (the “Dittman Reserved Claims”) relate to a certified class action pending against Defendant styled
Dittman v. Medical Solutions, L.L.C., et al., Eastern District of California Case No. 2:17-cv-01851-MCE-
 CKD (“Dittman”).

1 not a party to the proceeding"). No SAG Member is releasing any individual claims he
 2 or she may have against Defendant or any other Released Party. No one other than
 3 Class Representative Laura Buford is waiving his or her rights under California
 4 Civil Code Section 1542. [Crosner Decl., ¶ 13.]

5 **H. PAGA Penalties**

6 Finally, as addressed at length in connection with preliminary approval, the
 7 settlement provides for \$210,000 to be allocated to civil penalties under PAGA, with
 8 \$10,000 allocated to the PAGA claims of the Class, and the remaining \$200,000
 9 allocated to the PAGA claims of the SAG. Consistent with PAGA, a total of
 10 \$157,500.00 from this sum will be paid to the Labor & Workforce Development
 11 Agency as the State's share of the civil penalties, with \$2,500 included in the Net
 12 Settlement Amount for distribution to the Class Members and another \$50,000 to be
 13 distributed to the SAG members. [Crosner Decl., ¶ 14.]

14 **IV. THE SETTLEMENT MEETS THE REQUIREMENTS FOR FINAL**
 15 **APPROVAL**

16 In class action cases, the district court must approve any settlement. Fed.R.Civ.P.
 17 23(e). The Court already conducted an inquiry into the settlement's fairness and adequacy
 18 in the preliminary approval motion and now the notice process has been completed and
 19 Plaintiff respectfully requests the Court, with the benefit of the class member reaction,
 20 revisit and confirm the settlement overall is fair, reasonable and adequate and should be
 21 fully and finally approved.

22 The "universal standard" in evaluating a class action settlement under Fed.R.Civ.P.
 23 23(e) is whether the settlement is "fundamentally fair, adequate and reasonable." Fed.R.Civ.P. 23(e)(2); Officers for Justice v. Civil Service Comm'n, 688 F.2d 615, 625 (9th Cir. 1982). "[T]he court's intrusion upon what is otherwise a private consensual agreement
 24 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach
 25 a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
 26 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,

1 reasonable and adequate to all concerned.” Id.

2 As the Ninth Circuit has aptly recognized, “the very essence of a settlement is
 3 compromise.” Id. at 624. “[I]t is the very uncertainty of outcome in litigation and avoidance
 4 of wasteful and expensive litigation that induce consensual settlements. The proposed
 5 settlement is not to be judged against a hypothetical or speculative measure of what might
 6 have been achieved by the negotiators.” Linney v. Cellular Alaska Partnership, 151 F.3d
 7 1234, 1242 (9th Cir. 1998). Even if a proposed settlement amounts to a fraction of the
 8 potential recovery, this does not mean the settlement is necessarily inadequate. Id.

9 A proposed settlement is presumed to be fair when (1) it is reached through arm’s-
 10 length negotiations, (2) the putative class is represented by experienced counsel, and (3) the
 11 parties have conducted sufficient discovery. Wal-Mart Stores, Inc. v. Visa U.S.A. Inc., 396
 12 F.3d 96, 116 (2d Cir. 2005). Here, all of the factors giving rise to a presumption of fairness
 13 exist. First, the proposed settlement was the product of arm’s-length, non-collusive
 14 negotiations, overseen by a well-respected, independent mediator. [Crosner Decl., ¶ 6.]
 15 Second, the class is represented by experienced counsel. [Crosner Decl., ¶¶ 26-33.] Third,
 16 the parties exchanged a significant amount of information, both formally and informally,
 17 such that Plaintiff and her counsel are able to make an informed recommendation about the
 18 settlement. [Crosner Decl., ¶¶ 4-5.] Thus, the settlement is presumed to be fair.

19 In evaluating the fairness of a settlement, the district court may also consider the
 20 following factors: “the strength of the plaintiffs’ case; the risk, expense, complexity, and
 21 likely duration of further litigation; the risk of maintaining class action status throughout
 22 the trial; the amount offered in settlement; the extent of discovery completed and the stage
 23 of the proceedings; the experience and views of counsel; the presence of a governmental
 24 participant; and the reaction of the class members to the proposed settlement.” Hanlon v.
 25 Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). Likewise, as the Court recognized in
 26 its February 14, 2020 Order, many of these same “Hanlon factors” may inform the Court’s
 27 evaluation of the PAGA-only component of the settlement. February 14, 2020 Order
 28 (Docket No. 40), at ¶ 4. Lastly, the district court should satisfy itself that the settlement is

1 not the product of collusion between the plaintiff and the defendant. Class Plaintiffs v.
 2 Seattle, 955 F.2d. 1268, 1290 (9th Cir. 1992). Here, except for the absence of a
 3 governmental participant, each relevant factor weighs in favor of approving the settlement.

4 **A. The Strength of Plaintiff's Case.**

5 A settlement is not judged against what a plaintiff might recover had he or she
 6 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to
 7 be fair and reasonable. Linney, 151 F.3d at 1242; White v. Experian Information Solutions,
 8 Inc., 803 F.Supp.2d 1086, 1098 (C.D. Cal. 2011) (rejecting contention settlement was not
 9 fair and reasonable even though it represented 99% discount off the maximum value of the
 10 claims); see also Wershba v. Apple Computers, Inc., 91 Cal.App.4th 224, 246, 250 (2001)
 11 (“Compromise is inherent and necessary in the settlement process...even if the relief
 12 afforded by the proposed settlement is substantially narrower than it would be if the suits
 13 were to be successfully litigated, this is no bar to a class settlement because the public
 14 interest may indeed be served by a voluntary settlement in which each side gives ground in
 15 the interest of avoiding litigation”).

16 Plaintiff addressed the strengths and weaknesses of the class and PAGA claims and
 17 Defendant's defenses in detail in the motion for preliminary approval, and respectfully
 18 submits there has been no change in the law or facts of this case rendering the class claims
 19 any stronger than they were at preliminary approval. [Plaintiff's Motion for Preliminary
 20 Approval, at 12-18; Docket No. 33.] Although Plaintiff believes she could have prevailed,
 21 there were no guarantees as Defendant presented substantial evidence and legal defenses
 22 challenging the merits of Plaintiff's claims, as well as challenging class certification and the
 23 potential manageability of a trial on the PAGA claims. When the risks of prevailing at both
 24 certification and trial are factored into the equation, the settlement value is reasonable and
 25 supported. When the risks of litigation, the uncertainties involved in achieving class
 26 certification, the burdens of proof necessary to establish liability and prevail at trial on either
 27 a class or PAGA basis, the probability of appeal of a favorable judgment and its attendant
 28 delays, it is clear the total settlement amount of \$1,150,000 is within the “ballpark” of

1 reasonableness.

2 **B. The Risk, Expense, Complexity and Likely Duration of Further
3 Litigation**

4 Further litigation of this matter would not necessarily serve the interests of the class
5 members, and would require class members to offer individualized evidence regarding their
6 damages; importantly, the costs associated with such efforts would be substantial. In re:
7 GMC Pick-Up Truck Fuel Tank Prods. Litig., 55 F.3d 768, 784 (3d Cir. 1995) (“[t]he law
8 favors settlement, particularly in class actions and other complex cases where substantial
9 judicial resources can be conserved by avoiding formal litigation”). By the same token,
10 further litigation would cause significant delay of any eventual payments to the class
11 members, assuming they even prevail. Lastly, the complete absence of objections and the
12 paltry number of opt outs suggests rather strongly that the Class itself believes the benefits
13 of the instant settlement far outweigh the prospects of continued litigation.

14 **C. The Risk of Maintaining Class Action Status Throughout Trial.**

15 Plaintiff and her counsel strongly believe this lawsuit is maintainable as a class
16 action. However, there are risks associated with the class certification issue. This is
17 particularly true in this matter given the nature of Defendant’s business and the fact that, as
18 a staffing company, its employees worked for a number of different clients and at dozens
19 of medical facilities throughout California. While Plaintiff contends there are common
20 themes applicable to all Class Members based on Defendant’s own policies, she also
21 recognizes the very real possibility that the Court might agree with Defendant and find
22 insurmountable individual issues are present given the sheer number of client employers
23 and locations across California where Medical Solutions staffed the Settlement Class and
24 SAG Members.

25 Further, cases like Duran v. U.S. Bank, 59 Cal.4th 1 (2012) demonstrate the
26 complexity of using statistical samples to litigate representative class claims, and
27 demonstrate the very real risk that even using such techniques does not guarantee
28 certification or safeguard against decertification regardless of class size. Thus, even

1 Plaintiff's preferred method of evidentiary proof comes with the potential risk of losing
 2 certification in the process. Plaintiff acknowledges Defendant's arguments do present
 3 significant risk as to both certification and maintaining certification and consequently this
 4 factor suggests settlement is preferable to continued litigation.

5 **D. The Amount Offered in Settlement**

6 Defendant agreed to settle the action for a Gross Settlement Amount of \$1,150,000.
 7 As to the class component of the settlement, following deduction of attorney's fees and
 8 costs, the enhancement payment, the PAGA penalty payments, and settlement
 9 administration costs, this results in a Net Settlement Amount of around \$607,500, and
 10 represents on a net basis around 16-17% of the estimated class-wide liability. As discussed
 11 above, these monies will then be proportionately distributed to Settlement Class Members
 12 according to number of weeks worked during the class period, and will result in an average
 13 share of approximately \$745, with a maximum award in excess of \$4,000. [Crosner Decl.
 14 ¶¶ 18-19; Garrido Decl., ¶ 18.]

15 It is also significant that none of the settlement funds revert back to Medical
 16 Solutions, and provide immediate benefit to a class of workers without a lengthy claims
 17 process. White, 803 F.Supp.2d at 1086; Kakani v. Oracle Corp., 2007 WL 1793774, at
 18 *7 (N.D. Cal. June 19, 2007); c.f., Federal Judicial Center, Managing Class Action
 19 Litigation: A Pocket Guide for Judges, at 20 (3d ed. 2010), available at
 20 <http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf> (reversionary provisions and/or
 21 cumbersome claims process may indicate lack of fairness).

22 As to the PAGA-only component of the settlement, Defendant will pay substantial
 23 penalties of \$210,000 and, as addressed at preliminary approval such penalties serve the
 24 "primary purpose of PAGA, Jordan, 2018 U.S. Dist. LEXIS 25297, at *7-8). Further, the
 25 LWDA was given notice of the settlement and the January approval hearing and offered no
 26 objection or comment to the proposed PAGA penalties. "[W]ith respect to the PAGA
 27 claims, the Court finds persuasive that the California Labor & Workforce Development
 28 Agency ("LWDA") was invited to file a response to the proposed settlement agreement in

1 this case and elected not to file any objections or opposition, and “infers LWDA’s non-
 2 response [as] tantamount to its consent to the proposed settlement terms, namely the
 3 proposed PAGA penalty amount.” February 14, 2020 Order, at ¶ 5 (citing cases). As
 4 addressed below, Plaintiff also is providing the LWDA with notice of the final approval
 5 hearing and submitting a copy of this motion so that the LWDA will have another
 6 opportunity to comment on the proposed PAGA component of the settlement if it so desires.

7 Based on this, the size of the overall recovery well as the significant individual
 8 settlement awards supports a finding the proposed settlement is fair, adequate, and
 9 reasonable in all respects. Accordingly, this factor weighs in favor of approval as well.
 10 [Crosner Decl., ¶¶ 15-19.]

11 **E. The Stage of the Proceedings and the Extent of Discovery Completed**

12 Prior to reaching this settlement, Plaintiff’s counsel conducted substantial formal and
 13 informal discovery and investigation into the claims alleged by Plaintiff, including, among
 14 other things reviewing and analyzing handbooks and other policy documents, and reviewing
 15 and analyzing time and payroll data produced by Defendant with the aid of a consulting
 16 expert. Plaintiff’s counsel’s evaluation of the case and potential damages are based on
 17 reliable data on class size (total current and former employees), pay period data, average
 18 hourly rate of pay, policy documents, and thousands of data points derived from pay and
 19 time records. In addition, Plaintiff’s counsel has investigated the applicable law regarding
 20 the claims and defenses to the claims asserted in the litigation. [Crosner Decl., ¶¶ 4-5, 15.]
 21 Thus, Plaintiff and her counsel were able to act intelligently and effectively in negotiating
 22 the proposed Settlement. [Crosner Decl., at ¶ 15.] Plaintiff’s counsel has sufficient
 23 familiarity with the facts of the case to make an informed decision about the fairness of the
 24 settlement.

25 **F. The Experience and Views of Counsel.**

26 Plaintiff’s counsel has extensive experience in wage and hour class actions and is
 27 qualified to prosecute this action. Based on this combined experience, and after factoring in
 28 the risks discussed at length both above and at preliminary approval, Plaintiff’s counsel are

1 confident the current proposed settlement is fair, adequate, and reasonable. [Crosner Decl.,
 2 ¶¶ 15-19.]

3 **G. The Reaction of the Class to the Settlement.**

4 The settlement was well-received by the class. No objections have been filed,
 5 and only two class members opted out, for a 99.75% participation rate. [Garrido Decl., ¶¶
 6 14, 16.] As the Ninth Circuit and other federal courts recognize, class member reaction to
 7 the settlement is one of the most important factors to consider in determining if final
 8 approval should be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837
 9 (9th Cir. 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425
 10 (S.D.N.Y. 2001) (“[i]t is well-settled that the reaction of the class to the settlement is
 11 perhaps the most significant factor to be weighed in considering its adequacy”) (internal
 12 quotation marks omitted).

13 **H. No Collusion Between the Parties or their Counsel.**

14 As discussed above, the settlement is the product of adversarial, non-collusive, and
 15 arm’s-length bargaining between experienced counsel, facilitated by a well-respected
 16 mediator. There are no undisclosed side agreements between the parties or their counsel.
 17 [Crosner Decl., ¶ 6.]

18 **V. PAGA PENALTIES AND NOTICE TO THE LWDA**

19 The class component of the settlement also provides for \$10,000 to be allocated
 20 to civil penalties under PAGA for the Class Members’ potential PAGA claims, and
 21 Plaintiff requests the Court approve said amount. Consistent with PAGA, \$7,500 of this
 22 amount will be paid to the Labor and Workforce Development Agency as the State’s
 23 share of the civil penalties, with the remainder included in the Net Settlement Amount
 24 for distribution to the Class members.

25 Further, as discussed at the January 14, 2020 hearing on Plaintiff’s motion for
 26 preliminary approval, and in Plaintiff’s supplemental brief in support of preliminary
 27 approval (Docket No. 38), the Parties agreed to settle the PAGA claims of the SAG
 28 concurrently with the class settlement and allocated \$200,000 in resolution of those

1 claims. Settlement of the SAG Members' PAGA claims on the proposed terms, without
 2 further lengthy and costly litigation, provides meaningful relief and, even on a risk
 3 discounted basis, the settlement amount furthers the policies and purposes underlying
 4 PAGA. Jordan, 2018 U.S. Dist. LEXIS 25297, at *7-8 ("The proposed settlement imposes
 5 a substantial penalty payment of \$150,000, paid in exchange for a release of only those
 6 claims pled in the notice to the LWDA and the Complaint. This penalty has a substantial
 7 deterrent effect . . . [and] encourages compliance with the specific requirements of the Labor
 8 Code, which has the effect of protecting workers from unlawful employment practices and
 9 working conditions").

10 Plaintiff previously provided the LWDA with notice of the settlement along with
 11 a copy of the Joint Stipulation and, as the Court recognized in February 14 Order, the
 12 fact that the LWDA offered no comment or objection to the proposed PAGA is strongly
 13 persuasive in favor of approving the PAGA component of the settlement. [Feburary 14,
 14 2020 Order, at ¶ 5 (Docket No. 40).] Nevertheless, out of an abundance of caution,
 15 Plaintiff again gave the LWDA notice of the final approval hearing and also submitted
 16 a copy of this motion. [Crosner Decl., ¶ 24; Exh. 1.]

17 **VI. THE SETTLEMENT ADMINISTRATOR'S FEES**

18 The settlement provides for a payment to CPT of no more than \$25,000 for its
 19 services as the Claim Administrator. As set forth in the Declaration of Alan Garrido, CPT
 20 has performed and will continue to perform its required duties through final distribution of
 21 the settlement funds, and incurred \$29,500 in fees and expenses. [Garrido Decl., ¶ 19.]
 22 This amount is more than the initial estimate provided to the Court at preliminary approval,
 23 and the difference stems from the increase in the size of the SAG (which is still within the
 24 parameters of the Joint Stipulation³), and some miscommunication with CPT regarding the
 25 scope of services necessary to effectuate the Settlement and Notice procedure (Garrido
 26

27 ³ Section V.A.1.b. of the Joint Stipulation provides for a pro rata increase in the size of the SAG, plus a
 28 safety factor of 10%, to account for the several months between the mediation and the approval hearing.
 The increase in the SAG, from approximately 1,333 to 1,771, is well withing the parameters of the Joint
 Stipulation.

1 Decl., ¶ 19), for which Plaintiff and her counsel take responsibility. Plaintiff and her
 2 counsel will make up the difference between the final costs of administering settlement and
 3 the amount provided for in the Joint Stipulation. [Crosner Decl., ¶ 25.] Accordingly,
 4 Plaintiff respectfully requests the Court approve payment of \$25,000 to CPT from the Gross
 5 Settlement Amount. [Crosner Decl., ¶ 25.]

6 **VI. THE PROPOSED CLASS REPRESENTATIVE PAYMENT IS**
 7 **REASONABLE**

8 Courts award class representative payments to advance public policy by
 9 encouraging individuals to come forward and perform their civic duty in protecting the
 10 rights of the class, and also to compensate class representatives for their time, effort
 11 and inconvenience. Factors considered in determining whether to grant such an award
 12 may include the risk to the class representative in commencing suit, both financial and
 13 otherwise; the notoriety and personal difficulties encountered by the class
 14 representative; the amount of time and effort spent by the class representative; the
 15 duration of the litigation and the personal benefit (or lack thereof) enjoyed by the class
 16 representative as a result of the litigation.

17 Consistent with the Joint Stipulation, Plaintiff now requests an enhancement of
 18 \$7,500. This modest requested award was well-earned based on the risks she faced in
 19 coming forward as a lead plaintiff and the assistance she provided to counsel throughout
 20 the litigation. [Crosner Decl., ¶¶ 20-23; Declaration of Laura Buford (Docket No. 36), at
 21 ¶¶ 2-9.] Plaintiff submits the amount sought is well within the range of reasonableness
 22 for such awards in other wage and hour class actions. Nelson v. Avon 5 Prod., Inc.
 23 (N.D. Cal. Feb. 24, 2017) 2017 WL 733145, at *7 (approving incentive award of
 24 \$10,000 where plaintiff "appeared for an all-day deposition, searched for
 25 documentation relating to the class action, reviewed documents and settlement papers,
 26 attended the mediation and subsequent negotiations, and aided Class Counsel with
 27 negotiation efforts"); Torchia v. W.W. Grainger, Inc. (E.D. Cal. 2014) 304 F.R.D. 256
 28 (approving \$7,500 incentive award).

1 **VII. CONCLUSION**

2 For all the foregoing reasons, Plaintiff Laura Buford respectfully requests that the
3 Court grant this motion and grant final approval of the proposed class action settlement,
4 approve the requested class representative enhancement payments, approve the payment of
5 PAGA penalties to the State, approve payment of the Settlement Administrator's fees and
6 expenses, approve the award of attorney's fees and costs requested in Plaintiff's separate
7 Motion for Award of Attorney's Fees and Costs, and enter judgment in this action.

8

9 Dated: June 15, 2020

CROSNER LEGAL, P.C.

10 By:



ZACHARY M. CROSNER

Attorneys for Plaintiff LAURA BUFORD

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28